

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-1703-A

PETITION OF JOHN POULOS

OPINION OF THE BOARD

(Opinion Adopted December 21, 2005)

(Effective Date of Opinion: January 19, 2006)

Case No. S-1703-A is an application to modify an existing special exception for a landscape contractor.

The Hearing Examiner for Montgomery County held a hearing on the application on September 19, 2005, closed the record in the case on December 1, 2005, and on December 2, 2005 issued a Report and Recommendation for approval of the modification, subject to conditions.

Decision of the Board: Special Exception Modification Granted
 Subject to Conditions Enumerated Below.

The subject property is in Lot 6, Block A, Kellbrodean Estates Subdivision, located at 16121 Batson Road, Spencerville, Maryland, 20868, in the RC Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on December 21, 2005. After careful consideration and review of the record in the case the Board **adopts** the report and recommendation and **grants** the modification subject to the following conditions:

1. The Petitioner shall be bound by all of his testimony, representations and exhibits of record, relied upon in this report;
2. All terms and conditions of the approved special exception (S-1703) shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition.

3. The Petitioner shall continue to operate solely as a landscape contractor.
4. The hours of operation shall be 7:00 a.m. to 5:00 p.m. (6 p.m. for administrative staff), Monday through Friday, and Saturday from 8:00 a.m. to 4:00 p.m. On-site operations may occur on three Saturdays per month during the heavy season of March through November. Snow removal may take place as needed.
5. The total number of employees on site at any one time shall be not exceed 60 employees.
6. Employees may reach the site by employee carpooling or by company vanpooling, as long as the total number of peak hour trips during the a.m. and p.m. peak periods does not increase.
7. Business vehicles stored or parked on-site shall be limited to the following items or their replacements:
 - a. Petitioner is limited to a total of 19 trucks on site. Of that total,
 - b. 2 trucks may have a capacity of up to 26,000 pounds each;
 - c. 4 trucks may have a capacity of up to 19,000 pounds each; and
 - d. 13 trucks may have a capacity of up to 15,000 pounds each.
 - e. Two mobile construction trailers may used as offices until Building III is completed, at which time they must be removed from the site.
8. Except for the construction of Building III, all elements of the revised Site Plan (Exhibit 37(a)) must be implemented by January 15, 2006, including but not limited to the following:
 - a. Remove parking areas and other impervious surfaces that do not conform to the revised special exception plan, including removal of approximately 2,800 square feet of stone driveway and replacement with soil and grass seed.
 - b. Plant landscaping as indicated in the revised Site Plan and Landscape Plan to serve as a buffer and screen for the landscape contractor's work and storage areas.
 - c. Reverse the 6,000 square feet (0.137 acres) of encroachment into the Patuxent River Conservation Park on the east end of the subject site, re-naturalize the area according to specifications contained in Technical Staff's "Guidelines in Restoration/Naturalization" quoted below,¹ and maintain the

¹ "Guidelines in Restoration/Naturalization"

evergreen barrier demarking the property line with the adjacent park.

- d. Park personal items (storage trailer for non-business items and one family camper) so that they do not encroach upon the required 50-foot setback from the property line, as indicated on the revised site plan; and
 - e. Move the trash dumpster to the southeast of Building I, as indicated in the revised Site Plan.
9. Petitioner shall not permit the level of on-site imperviousness to exceed 22.7%.
10. Petitioner shall comply with storm water and sediment control regulations of the Montgomery County Department of Permitting Services.
11. If this special exception requires physical modification other than listed in the revised site plan, Petitioner must first apply to the Board of Appeals for approval, and must submit, in addition to any other required materials, the following items:
- a. An updated stormwater management concept plan approved by the Department of Permitting Services;
 - b. A plan showing minimization of imperviousness approved by Technical Staff of the M-NCPPC ; and
 - c. A septic system approval from the Department of Permitting Services.
12. Petitioner shall comply with any noise study that may be required by the Montgomery County Department of Environmental Protection.

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- Use 1.5" caliper trees
 - All must be native to the Maryland Piedmont
 - Planted at a rate of 200 trees per acre
 - 2 (two) years minimum maintenance must be provided. At the end of the 2 years, the planting must meet the 80% survival requirement.
 - Deer protection must be provided. (At this caliper size tree, "buck rubbing" protection is often sufficient. However, if the deer eat the plants anyway, the trees must be replanted and maintenance period begun again).
 - Non-native invasives must be controlled on the site. To this end, trees should be planted in rows so that invasives can be mowed/removed while the trees are becoming established.

Notes

- Normally we would require a mixture of native trees and shrubs in a re-naturalization area, but since this is a relatively small reforestation plot, we will permit the entire area to be planted with native trees if the applicant prefers a "tree species only" mix.
- "Native to the Maryland Piedmont" means using appropriate "strict species" rather than cultivars. Please see the attached list for suggestions.

13. Petitioner shall see to it that the existing fuel storage tanks on site meet required technical standards as well as all county, state and federal permitting requirements. The above-ground tanks must also have an underwriter's laboratory number on them, confirming that they are rated for above-ground storage.
14. Petitioner shall ensure that all chemicals stored on site are stored in accordance with applicable Codes.
15. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
16. Petitioner shall make sure that all trash cans placed outside for trash collection are equipped with lids and that the lids are correctly in place to prevent trash from blowing onto the property of others.
17. Petitioner shall instruct his employees that they may not play radios without earphones, and that they should restrict the use of horns and hollering to that which is necessary to safely conduct the landscape contracting business.
18. Petitioner shall ensure that the security alarm system for the business is properly maintained to avoid unwarranted activation of the alarms.
19. A noisy compressor is housed in Building I. Petitioner must keep the three northernmost doors on Building I (*i.e.*, the three doors on the left when facing the building) closed when the compressor therein is operating.
20. To further reduce noise, Petitioner shall refrain from running a wood chipper, sawing firewood outdoors, or cutting of the grass in the northwest area of the subject site until after 1:30 p.m., daily. Exhibit 37 and Tr. 98. Noise restrictions do not include the fixing, testing, loading and moving of equipment that is an integral part of the landscape contracting business.
21. The special exception holder shall be responsible for 'policing' the trash containers on the subject property and for picking up trash that blows around on the site and onto neighboring properties.

On a motion by Angelo M. Caputo, seconded by Caryn L. Hines, with Wendell M. Holloway and Donna L. Barron, Vice-Chair in agreement, and Allison Ishihara Fultz, Chair necessarily absent, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of January, 2006.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.